

**UNITED STATES OF AMERICA
BEFORE THE
FEDERAL ENERGY REGULATORY COMMISSION**

PJM Interconnection, L.L.C.

)

Docket No. ER03-332-000

**MOTION TO FILE LATE COMMENTS
AND COMMENTS
OF THE
ILLINOIS COMMERCE COMMISSION**

Pursuant to Rules 211 and 212 of the Commission's Rules of Practice and Procedure, 18 C.F.R. §§ 385.211, 212 (2002) the Illinois Commerce Commission ("ICC") hereby submits this motion to file late comments and comments on the December 24, 2002 filing of the PJM Interconnection Inc. ("PJM") ("Filing") in the above-captioned proceeding.¹

MOTION TO FILE LATE COMMENTS

The Commission issued notice on this Filing on December 30, 2002, setting January 14, 2003 as the comment date. The ICC filed a notice of intervention on January 14, 2003. However, because of the administrative process in Illinois and the open meeting schedule, it was unable to meet the comment deadline on these substantive comments. The Commission has regularly sought the views of state regulatory commissions in addressing matters related to regional transmission organizations such as PJM. Moreover, given the early stage of this proceeding, the ICC believes that

¹ The ICC is authorized to represent that the Michigan Public Service Commission supports the ICC position expressed in these comments.

acceptance of the comments will not disrupt the proceeding or prejudice any party. The ICC, therefore, respectfully requests that the Commission accept these comments filed out of time.

COMMENTS

I. BACKGROUND

In the December 24th Filing, PJM proposes to amend the Amended and Restated Operating Agreement of the PJM Interconnection L.L.C. (“Operating Agreement”) to: (1) increase the size of the PJM Board of Managers by two members; (2) establish a Nominating Committee comprised of stakeholders and Board members to choose candidates for the Board; and (3) permit election of Board members by a simple majority, rather than a supermajority, of the PJM voting sectors. Of these issues, the ICC will comment substantively herein only on the issue of representation on PJM’s proposed Nominating Committee.

In the Filing, PJM states that its proposal to expand the number of PJM Board members is being driven by the “substantial increase in PJM’s size.”² The Filing notes that several large transmission-owning companies, including Commonwealth Edison Company (“ComEd”), are in the process of joining PJM.³ ComEd is a major electric utility in Illinois. Consequently, the ICC has a great interest in this PJM proceeding. While the ICC has no objection to the expansion of PJM’s Board, it recommends that PJM be required to extend an option to include state regulatory representation on the Nominating Committee.

² Filing, at 3.

³ Filing, at 3-4.

II. ICC POSITION AND RECOMMENDATION

The Filing proposes to amend Section 7.1 of the PJM Operating Agreement to establish a Nominating Committee consisting of “one representative elected annually from each sector of the Members Committee and three Board members, two of which will be voting representatives on the Nominating Committee and one of which will be a non-voting representative.”⁴ The ICC recommends modifying the second sentence of PJM’s proposed Section 7.1 of the PJM Operating Agreement to permit state regulators the option of placing a representative on PJM’s Nominating Committee. The inclusion of a state regulator representative on the Nominating Committee will help to ensure a list of candidates for the PJM Board of Managers that is both more independent and more likely to represent the interests of the market as a whole rather than the parochial interests of particular market participants or classes of market participants.⁵

III. DISCUSSION

It is the ICC’s understanding that state regulators do not constitute a sector of the PJM Members Committee. Under PJM’s proposal, therefore, state regulators would not be permitted to place a representative on the Nominating Committee because Nominating Committee representatives are to be selected by the sectors of the Members Committee. The ICC believes that inclusion of a state regulator representative on the Nominating Committee could greatly improve the balance of the Committee’s deliberations. In particular, including a state regulator representative on the Nominating Committee will

⁴ Filing, at 4.

⁵ See, *Remedying Undue Discrimination through Open Access Transmission Service and Standard Electricity Market Design*, Notice of Proposed Rulemaking, 100 FERC ¶ 61,138, at P556 (2002) (hereinafter, “SMD NOPR”).

contribute to the objective of producing candidates for the Board of Directors that are both independent and represent the interests of the market as a whole rather than the parochial interests of particular market participants or classes of market participants.

The ICC's proposal is consistent with the Commission's determinations in *TRANSLink Transmission Company L.L.C.*⁶ where the Commission stated,

While we will not dictate the exact process by which the Board is selected, it must involve at least as much stakeholder input as that adopted by GridSouth. Therefore, we direct TRANSLink to have the search firm select a larger pool of candidates and to allow the Stakeholder Advisory Board to have direct influence on the candidates that will comprise the slate to be voted on by the Participants.⁷

Indeed, the eventual TRANSLink Board nominating committee was open to representatives of the Midwest ISO Advisory Committee (of which state regulators are members) as well as additional regulator representatives from each state affected by TRANSLink.

The ICC's proposal is also consistent with the Commission's Standard Market Design Notice of Proposed Rulemaking ("SMD NOPR"). The SMD NOPR states, "A nominating committee composed of two members from each of the stakeholder classes would be formed to review the list of candidates presented by the search firm."⁸ The SMD NOPR clearly envisions that state regulators will be one of the seven stakeholder classes.⁹

⁶ *TRANSLink Transmission Company, L.L.C., Alliant Energy Corporate Services, Inc., MidAmerican Energy Company and Xcel Energy Services, Inc.*, 99 FERC ¶ 61,140 (2002) (*hereinafter*, *TRANSLink*).

⁷ *TRANSLink*, at 61,461

⁸ SMD NOPR, at P 566.

⁹ SMD NOPR, at P 561.

Accordingly, consistent with the Commission's decisions in GridSouth, TRANSLink and the proposal in its SMD NOPR, the ICC herein recommends that PJM's December 24th Filing be further amended to permit state regulators the option of placing a representative on the Nominating Committee.

The Operating Agreement states that the full Members Committee will elect Board members from among the candidates provided by the Nominating Committee. As stated above, it is the ICC's understanding that state regulators are not PJM Members and, consequently, are not permitted to cast votes on the Members Committee. While the ICC believes that, in general the PJM advisory process could be improved by more formally including state regulatory representation in its Members' groups, the ICC is not proposing a change to that entire process with these comments. Rather, the objection herein is limited merely to state regulators being excluded from the Nominating Committee.

In particular, the ICC recommends modifying the second sentence of PJM's proposed amended Section 7.1 by adding the underlined language as follows:

A Nominating Committee, consisting of: **(1) one representative elected annually from each sector of the Members Committee established under section 8.1; (2) at the states' option, one representative of state regulators from states in which PJM operates;** and **(3) three voting Board Members** (provided that one such Board Member shall serve only as a non-voting member of the Nominating Committee), shall retain an independent consultant, which shall be directed to prepare a list of persons qualified and willing to serve on the PJM Board.

This modification would provide the states in which PJM operates with the option of placing a representative on the Nominating Committee, which would enable the states to participate in a more meaningful manner and ensure a more balanced decision-making

process. Further it would promote the goal of having independent PJM Board members and is consistent with the Commission's policy.

IV. CONCLUSION

WHEREFORE, the ICC respectfully requests that the Commission direct PJM to further amend Section 7.1 of the Operating Agreement as proposed above to permit regulators in states where PJM operates the option of placing a representative on the Nominating Committee.

Respectfully submitted,

/s/ Christine F. Ericson

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ILLINOIS COMMERCE COMMISSION

Dated: January 22, 2003

CERTIFICATE OF SERVICE

I hereby certify that I caused copies of the foregoing document of the Illinois Commerce Commission to be served this day upon each person designated on the official service list compiled by the Secretary in this proceeding, a copy of which is attached, in accordance with the requirements of Rule 2010 of the Commission's Rules of Practice and Procedure.

Dated at Chicago, Illinois, this 22nd day of January 2003.

/s/ Christine F. Ericson

Christine F. Ericson
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